

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

ORDER

The plaintiffs have filed a “Leave for Motion to Determine Who among the Parties of this Litigation Has the Superior Title to the Property as Shown by Legal Evidence” (Doc. 76). The Court concluded that this unwieldy document may be construed as a motion for partial summary judgment but offered the defendants an opportunity to express their views. (Doc. 77).

The defendants respond, *inter alia*, that consideration of a motion for partial summary judgment on the quiet title issue is premature because their position on the issue will depend in part on evidence from the plaintiffs' depositions (including the plaintiffs' privity *vel non* with Rosemary Johnson), which depositions have yet to be taken. (Doc. 78, Kaffer Declaration).¹

“If a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court may ... defer considering the motion or deny it” Fed. R. Civ. P. 56(d). The defendants have satisfied Rule 56(d), and the Court concludes that the most appropriate course is to deny the plaintiffs’ motion as premature.

For the reasons set forth above, the plaintiffs' motion is **denied**, without prejudice to their ability to file a similar motion at an appropriate time.

¹ The discovery deadline is September 27, 2013. (Doc. 39 at 1).

DONE and ORDERED this 22nd day of July, 2013.

s/ WILLIAM H. STEELE
CHIEF UNITED STATES DISTRICT JUDGE